

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JORGE RIVERA-SANCHEZ,)
) CASE NO. C09-1201-MJP
Petitioner,)
)
v.) REPORT AND RECOMMENDATION
)
UNITED STATES OF AMERICA)
)
Respondent.)
_____)

INTRODUCTION AND SUMMARY CONCLUSION

Petitioner filed a motion for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(2). (Dkt. 1.) The Court construed the motion as one pursuant to 28 U.S.C. § 2255 and referred it to the undersigned for consideration. (Dkt. 4.)

Petitioner entered a guilty plea on February 22, 2005, to conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841 (b)(1)(A), and 846. (Dkt. 6, Ex. A.) He made the plea pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), with both parties agreeing on a sentencing range of 120 to 156 months. (*See id.*, Ex. B.) The Court accepted the plea and sentenced petitioner, on May 20, 2005, to 132 months in prison and five

01 years of supervised release. (*Id.*, Ex. A.) Petitioner did not appeal his sentence.

02 Petitioner now seeks a decrease in his sentence. (Dkt. 1.) Respondent opposes
03 petitioner's motion, whether construed as a motion for a sentence reduction or a § 2255 petition.
04 (Dkt. 6.) Petitioner did not reply to respondent's opposition. For the reasons described
05 below, the Court concludes that petitioner's motion should be denied and this case dismissed.

06 Petitioner's motion seeks a reduction of his sentence pursuant to § 3582(c)(2). The
07 Court should, therefore, decline to recharacterize the motion as one under § 2255. *See*
08 *generally United States v. Seasing*, 234 F.3d 456, 463-64 (9th Cir. 2001) (as amended) ("When
09 presented with a pro se motion that could be recharacterized as 28 U.S.C. § 2255 motion, a
10 district court should not so recharacterize the motion unless: (a) the pro se prisoner, with
11 knowledge of the potential adverse consequences of such a recharacterization, consents or (b)
12 the district court finds that because of the relief sought that the motion should be
13 recharacterized as a 28 U.S.C. § 2255 motion and offers the pro se prisoner the opportunity,
14 after informing the prisoner of the consequences of recharacterization, to withdraw the
15 motion.") Given this recommendation, the undersigned considers petitioner's claims solely in
16 relation to § 3582.¹

17 Section 3582(c)(2), in relevant part, authorizes a court to reduce an imposed term of
18 imprisonment "in the case of a defendant who has been sentenced . . . based on a sentencing
19 range that has subsequently been lowered by the Sentencing Commission . . . , if such a

20 1 The Court does note that, as argued by respondent, a § 2255 petition filed now by petitioner would be
21 time-barred by the applicable statute of limitations. *See* 28 U.S.C. § 2255(f) (one-year statute of limitations
22 begins to run, unless an exception applies, on the date on which the judgment of conviction becomes final); *United States v. Schwartz*, 274 F.3d 1220, 1223 & n.1 (9th Cir. 2001) (where no direct appeal filed, conviction becomes final at the expiration of the time in which such an appeal could have been filed – ten days after the entry of judgment); (Dkt. 6, Ex. A (court accepted plea from and sentenced petitioner on May 20, 2005).)

01 reduction is consistent with the applicable policy statements issued by the Sentencing
02 Commission.” As observed by respondent, defendants whose guidelines have not changed are
03 not entitled to resentencing. USSG § 1B1.10(a) (“A reduction in the defendant’s term of
04 imprisonment is not consistent with this policy statement and therefore is not authorized under
05 18 U.S.C. 3582(c)(2) if . . . an amendment listed in subsection (c) does not have the effect of
06 lowering the defendant’s applicable guideline range.”)

07 Petitioner relies on Amendment 591 to the Sentencing Guidelines in arguing for a
08 reduction of his sentence. However, for the reasons asserted by respondent and described
09 below, petitioner does not qualify for a sentence reduction based on Amendment 591.

10 Amendment 591 was effective November 1, 2000, long before petitioner’s 2005
11 sentencing. 18 U.S.C.S. Appx. C, Amend. 591. This amendment, therefore, affords
12 petitioner no relief under § 3582(c)(2). *United States v. Sprague*, 135 F.3d 1301, 1303 (9th
13 Cir. 1998) (§ 3582(c)(2) provides redress if the Sentencing Guidelines were changed
14 subsequent to sentencing). Moreover, even if Amendment 591 did not precede petitioner’s
15 sentence, it references USSG § 2X.1.1 – “Attempt, Solicitation, or Conspiracy (Not Covered by
16 a Specific Guideline)” (emphasis added) – rather than the drug conspiracy for which petitioner
17 was convicted, 21 U.S.C. § 846, which is covered by a specific guideline. Finally, petitioner’s
18 sentence did not rest on the applicable guideline range; it resulted from a stipulation in his plea
19 agreement pursuant to Rule 11(c)(1)(C). It thus appears that, even if a retroactive guideline
20 amendment could be identified, this Court would lack the authority to reduce petitioner’s
21 sentence under § 3582(c). *United States v. Bride*, 581 F.3d 888, 889-91 (9th Cir. 2009) (where
22 a sentence is imposed based on the binding agreement of the parties, rather than the applicable

01 guidelines range, the district court lacks authority to reduce the sentence under § 3582(c)(2)),
02 cert. denied 130 S. Ct. 1160 (2010). *See also United States v. Trujeque*, 100 F.3d 869, 871
03 (10th Cir. 1996) (where sentence based on a valid plea agreement, rather than ““on a sentencing
04 range that has subsequently been lowered by the Sentencing Commission,”” district court
05 should dismiss §3582(c)(2) motion “without considering its merits.”) (quoting § 3582(c)(2)).

06 In sum, petitioner does not qualify for a reduction of his sentence under § 3582(c)(2).
07 As such, his motion for a sentence reduction should be DENIED and this case DISMISSED.
08 A proposed Order of Dismissal accompanies this Report and Recommendation.

09 DATED this 23rd day of August, 2010.

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12 Mary Alice Theiler
13 United States Magistrate Judge
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